

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ALABAMA

DELANEY DEVELOPMENT, INC. ,	*	
YESTER OAKS APARTMENTS, WINDSOR	*	CIVIL ACTION NO. 11-500
PLACE APARTMENTS, CABANA	*	
APARTMENTS, CHCKASAW SHOPPING	*	
CENTER, EXOTIC WINGS, BRACO COMPLEX,	*	JUDGE:
PATHWAYS APARTMENTS, SANDPIPER	*	
APARTMENTS, and YESTER OAKS	*	
SHOPPING CENTER	*	MAGISTRATE:
	*	
VERSUS	*	
	*	
LANDMARK AMERICAN INSURANCE	*	
COMPANY, MT. HAWLEY INSURANCE	*	
COMPANY, and ILLINOIS UNION INSURANCE	*	
COMPANY	*	

PLAINTIFF'S FIRST SUPPLEMENTAL AND AMENDED COMPLAINT

NOW INTO COURT, through undersigned counsel, comes plaintiff, Delaney Development, Inc. who files this First Supplemental and Amended Complaint, as follows:

1.

Plaintiff re-alleges and re-avers all allegations, assertions and demands made in its original Complaint, previously filed on August 26, 2011, as if copied herein in extenso.

2.

Plaintiff amends Paragraph I of Plaintiff's original Complaint so that Paragraph I reads as follows:

I.

Made plaintiff herein is:

DELANEY DEVELOPMENT, INC., a corporation organized under the laws of Alabama and with its principal place of business in Alabama.

3.

Plaintiff amends Paragraph II of Plaintiff's original Complaint so that Paragraph II reads as follows:

II.

Made defendants herein are:

LANDMARK AMERICAN INSURANCE COMPANY, a foreign corporation authorized to do and doing business within Alabama and within the jurisdiction of this Honorable Court;

MT. HAWLEY INSURANCE COMPANY, a foreign corporation authorized to do and doing business within Alabama and within the jurisdiction of this Honorable Court; and

ILLINOIS UNION INSURANCE COMPANY, a foreign corporation authorized to do and doing business within Alabama and within the jurisdiction of this Honorable Court.

4.

Plaintiff amends Paragraph V of Plaintiff's original Complaint so that Paragraph V reads as follows:

V.

Defendants are justly and truly indebted to Plaintiff herein for damages, together with legal interest thereon from the date of judicial demand until paid, and for costs in these proceedings, for the following, to-wit:

5.

Plaintiff amends Paragraph VI of Plaintiff's original Complaint so that Paragraph VI reads as follows:

VI.

Plaintiff, Delaney Development, Inc. owns and manages commercial and multi-family residential real estate located in and around the Greater Mobile area.

6.

Plaintiff amends Paragraph VII of Plaintiff's original Complaint so that Paragraph VII reads as follows:

VII.

Plaintiff contracted with Landmark American Insurance Company (hereinafter "Landmark"), Mt. Hawley Insurance Company (hereinafter "Mt. Hawley") and Illinois Union Insurance Company (hereinafter "Illinois") to insure its commercial properties. The Landmark policy bears policy number LHD 340443. The Mt. Hawley policy bears policy number MWH 0010082. The Illinois policy bears policy number D35885766-002.

7.

Plaintiff amends Paragraph IX of Plaintiff's original Complaint so that Paragraph IX reads as follows:

IX.

On August 29, 2005, Hurricane Katrina made landfall in the greater southern Alabama area. This windstorm severely damaged Plaintiff's commercial properties. Plaintiff mitigated its damages at all relevant times, performing necessary repairs in an attempt to swiftly reopen its commercial properties.

8.

Plaintiff amends Paragraph X of Plaintiff's original Complaint so that Paragraph X reads as follows:

X.

In anticipation of the impending storm, government officials ordered a voluntary evacuation of the greater Mobile area in and around southern Alabama. The voluntary evacuation order applied to everyone, including the plaintiff. The voluntary evacuation order forced everyone to remain away from the affected area until official notice to return was provided.

9.

Plaintiff amends Paragraph XI of Plaintiff's original Complaint so that Paragraph XI reads as follows:

XI.

Plaintiff timely notified Landmark, Mt. Hawley and Illinois of its loss after Hurricane Katrina caused damage to Plaintiff's properties.

10.

Plaintiff amends Paragraph XII of Plaintiff's original Complaint so that Paragraph XII reads as follows:

XII.

As of the date of the filing of this Complaint and absent evidence to the contrary, Landmark, Mt. Hawley and/or Illinois have not tendered Delaney Development, Inc. a sufficient amount to adequately compensate Plaintiff for its losses from Hurricane Katrina.

11.

Plaintiff amends Paragraph XIV of Plaintiff's original Complaint so that Paragraph XIV reads as follows:

XIV.

Plaintiff's commercial insurance policies issued by Landmark, Mt. Hawley and Illinois provide coverage for loss or damage caused by the peril of wind.

12.

Plaintiff amends Paragraph XV of Plaintiff's original Complaint so that Paragraph XV reads as follows:

XV.

Despite having been provided with "satisfactory proof of loss," and despite conducting its own thorough investigation of the damage Plaintiff incurred from Hurricane Katrina, Landmark, Mt. Hawley and/or Illinois have not adequately paid for any or all of the damage sustained to Plaintiff's properties caused by this covered loss.

13.

Plaintiff amends Paragraph XVI of Plaintiff's original Complaint so that Paragraph XVI reads as follows:

XVI.

Landmark, Mt. Hawley and/or Illinois are liable unto Plaintiff under the following legal theories:

- a. Breach of contract;
- b. Breach of duty of good faith and fair dealing; and

- c. Any and all other legal theories which may be found through discovery and proven at trial in this matter.

14.

Plaintiff amends Paragraph XVII of Plaintiff's original Complaint so that Paragraph XVII reads as follows:

XVII.

As a result of Landmark, Mt. Hawley and Illinois' actions, Plaintiff has suffered the following nonexclusive list of damages:

- a. Loss of use of insured property;
- b. Loss of enjoyment of insured property;
- c. Loss of business income;
- d. Loss of movable goods;
- e. Diminution in value of the property;
- f. Permanent repair and remediation expenses;
- g. Temporary repair and remediation expenses;
- h. Attorney's fees;
- i. Costs of this litigation; and
- j. All other losses that will be proven at the trial of this matter.

15.

Plaintiff amends Paragraph XVIII of Plaintiff's original Complaint so that Paragraph XVIII reads as follows:

XVIII.

Plaintiff reserves the right to supplement and amend this Complaint for Damages.

16.

Plaintiff amends Paragraph XIX of Plaintiff's original Complaint so that Paragraph XIX reads as follows:

XIX.

Plaintiff prays for trial by jury.

WHEREFORE, plaintiff herein, Delaney Development, Inc., prays that its First Supplemental and Amended Complaint be deemed good, valid, and sufficient, and after due proceedings had, there be judgment rendered herein in its favor. Plaintiff further prays that defendants, Landmark American Insurance Company, Mt. Hawley Insurance Company and Illinois Union Insurance Company, be served with a copy of the original Complaint as well as this First Supplemental and Amended Complaint and be duly cited to appear and answer the same, and that after expiration of all legal delays and due proceedings, there be judgment rendered in favor of plaintiff and against defendants, in an amount that will fully compensate plaintiff for its damages pursuant to the evidence and in accordance with the law and for penalties and attorney's fees; all sums with legal interest thereon from the date of judicial demand until fully paid, for all costs of these proceedings, and for all general and equitable relief.

Respectfully submitted,

/s/C. Bennett Long

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